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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,769	08/28/2003	Jurgen Focke	Q77064	5854
23373	7590	08/24/2004	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			DESAI, HEMANT	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/649,769	FOCKE ET AL.
	Examiner Hemant M Desai	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 August 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group II claims 4-16 in the reply filed on 6/24/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Specification***

2. The disclosure is objected to because of the following informalities: There are no heading, for example: "SUMMARY OF THE INVENTION", "BRIEF DESCRIPTION OF THE DRAWINGS", "DETAILED DESCRIPTION OF THE INVENTION", etc.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 14, the phrase "bottom supporting means", line 5, it not exactly understood what applicant is referring to as "bottom". "the border in the underside", claim 15, line 6, it not clear which border on the underside applicant is referring to.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke et al. (5549537) in view of Spatafora et al. (6439239).

Focke et al. disclose an apparatus for producing cigarette packs of the hinge-lid-box type with cross-sectionally round or beveled upright pack edges - round edges (11, 12, fig. 2) or oblique edges - for planar blanks (14, fig. 2) to be pre-shaped with the aid of rounding or beveling tools (20, fig. 2) in the region of the round edges (11, 12) or oblique edges and then to be fed to a packaging machine (folding turret 17, fig. 1) with folding means (rollers 21, 22, fig. 2) for producing the hinge-lid box, wherein a shaping sub-assembly (18, fig. 1) with an endless conveyor (16, fig. 1) for transporting the blanks during the preliminary shaping and has shaping tools (20-22, fig. 2) it being possible for blanks to be shaped to form the round edges (11, 12).

Focke et al., as mentioned above, disclose all the claimed limitations, except for a rounding turret which, along the circumference, has mounts for in each case one blank (10) and has shaping tools assigned to each mount, for blanks to be shaped to form the round edges during the preferably continuous rotary movement of the rounding turret. However, Spatafora et al. teach a turret (10, fig. 1) having mounts (unit 12, fig. 1) for in each case one blank (6, fig. 1) along its circumference for blank to be shaped

(wrapped) during the preferably continuous rotary movement of the rounding turret to make the packaging machine economical and compact (see col. 1, lines 43-45).

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the rounding turret as taught by Spatafora et al. in the apparatus of Focke et al. for producing cigarette packs to shape the blanks in a continuous rotary movement of the turret to make the packaging machine economical and compact.

Regarding claim 5, Focke et al. disclose that each securing means for a blank (14), in each case one suction holder (see col. 2, lines 56-59), is assigned shaping tools (rollers 21, 22, fig. 2) arranged on both sides, moveable and rotatable rounding rollers (22, 23) together with further shaping tools (plate 20), shape round edges (11, 12).

Regarding claim 8, Focke et al. disclose that the rounding rollers (22, 23) are mounted on holders, on supporting arms (31, 32, fig. 3) and can be moved in the radial direction, and transversely thereto (see fig. 3), in order to execute rounding movements.

Regarding claim 6, Focke et al. disclose that the shaping member (20) is arranged both sides of the securing means (not shown) and the shaping member has rounding (23, 34, fig. 3) corresponding to the shape of the round edges (11,12) which is to be formed, the rounding rollers (21, 22) shaping the blank (14) around the rounding (23,24) of the shaping members (20). Focke et al. do not disclose plurality of shaping members, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the second shaping member, since it

has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 7, the shaping member can be moved transversely in a plane parallel to the blank to deform the blank. Note that “can be moved transversely” refer to as capable of moving transversely.

Regarding claims 9-10, Focke et al. do not disclose transfer conveyor and removal conveyor. However, Spatafora et al. teaches transfer conveyor (43, fig. 1) to feed the blanks to the rounding turret and removal conveyor (21, fig. 1) to convey away in the removal station (20, fig. 1). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the transfer and removal conveyors as taught by Spatafora et al. in the apparatus of Focke et al. for producing cigarette packs to feed and remove the blanks from the rounding turret.

7. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke et al. and Spatafora et al. as applied to claim 4 above, and further in view of Focke et al. (6206815).

The apparatus for producing cigarette pack of Focke et al. as modified by Spatafora et al. meets all the limitations of claim 4, except for that the blanks can be stacked.

However, Focke et al. ('815) teach that blanks (10, fig. 7) can be stacked to form stack of formed blanks (23, fig. 7) and supply the blank stack to the packaging machine (see col. 6, lines 50-63; col. 5, lines 51-54). Therefore it would have been obvious to

one having ordinary skill in the art at the time the invention was made to having stacked the formed blanks as taught by Focke et al. ('815) in the modified apparatus for producing cigarette pack of Focke et al. to form stack of formed blank and supply the blank stack to the packaging machine. Note that claim 11, merely recites that the blanks can be stacked to form blank stacks, and therefore stacking assembly is not construed being part of the invention. Likewise, for the same reason, in claims 12 and 13, the claimed elements of stacking assembly is not considered as a part of the invention.

Regarding claims 13-14 and 16, Focke et al. ('815) teaches that the blank stack (23) can be transferred to a conveying shaft (48, fig. 9) and the conveying shaft can be displaced in the transverse direction (transverse to the web supply direction) and the blank stack (23) can be transported away from the conveying shaft (see col. 5, lines 2-5) to transfer the blank stack (23) to packaging machine (see col. 4, lines 45-54). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having the blank stack transferred to a conveying shaft and the conveying shaft can be displaced in the transverse direction and the blank stack can be transported away from the conveying shaft as taught by Focke et al. ('815) in the modified apparatus for producing cigarette pack of Focke et al. to transfer the blank stack to packaging machine. Note that claim 14 merely recites that the conveying shaft can be displaced in the transverse direction and in claim 16 merely recites that the stack can be transported away from the conveying shaft, and therefore the structure of the conveying shaft (lateral walls and bottom supporting means and) and lifting means and supporting components (claim 16) are not considered as a part of the invention.

Regarding claim 15, Focke et al. teaches deforming means (20 and 68, figs. 3 and 6) to deform the blanks (10) to compensate the curvature and make the blank flat (see col. 5, lines 55-67; col. 6, lines 1-16). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the deformation means as taught by Focke et al. ('815) in the modified apparatus for producing cigarette pack of Focke et al. to compensate the curvature and make the blank stack flat. Note that claim 15 merely recites that the blank stack can be deformed, and therefore the pressure exerting means is not considered as a part of the invention.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Hemant M. Desai*

HMD